

Employment of Foreign Nationals

Employees – Human Resources

CWU Policy 301-11

Effective: June 13, 2018

Policy Review Date: YEAR

Policy Executive: Senior Vice President – Finance and Administration

Responsible Office/Unit: Human Resources

Policy Statement:

Applicability:

Content:

Policy

Appendix A – Employment of Foreign Nationals Procedure

(1) Introduction

- A. Central Washington University has a long tradition of employing faculty from around the world. The institution's goal is to enable departments to recruit and retain qualified international scholars in support of the institution's teaching, research, and public service mission by providing timely and accurate guidance, facilitating the immigration process, and monitoring immigration compliance within a complex and ever-changing regulatory environment.
- B. Central Washington University is committed to open access and active participation in the global community of scholars and postsecondary education professionals. CWU is interested in attracting and retaining talented colleagues—regardless of national or cultural origins.
- C. Federal law governs the employment of foreign nationals. It is unlawful to hire a foreign national who is not authorized to work in the United States. CWU's success in obtaining approval of its petitions to employ foreign nationals is dependent upon its responsible adherence to laws, regulations, and procedures. It is essential, therefore, that all those with authority to recruit and hire university employees work closely with Human Resources to ensure they understand the procedures, time frames, and restrictions involved in the appointment of foreign nationals and plan accordingly.
- D. Foreign nationals are not a protected class (including persons with temporary employment authorization or in work-authorized nonimmigrant visa status such as an E-1, E-2, E-3, H-1B, L-1, TN, O-1 or P or Q visa status) under the Immigration and Nationality Act (INA) § 274B(c) [8 U.S. Code § 1324b(c)].

- E. CWU personnel policies and practices are consistent with United States laws and regulations governing the employment of foreign nationals, the issuance of certificates of eligibility, and the filing of petitions for both temporary and permanent employment. All appointments, at any level within the university, are contingent upon the individual obtaining the proper immigration status, and the term of employment may not exceed the duration of the employee's authorization and status.
- F. To be employed legally in the United States, a prospective employee must possess one of the following:
 - 1. An employment-related nonimmigrant visa that allows an individual to work for a particular employer,
 - 2. An Employment Authorization Document (work permit), or
 - 3. A Permanent Resident Card (also known as a Green Card).
- G. Each of the documents listed above has different application requirements. The conditions to be met and the length of work in the United States will depend on whether a Green Card, work permit, or non-immigrant visa is sponsored. If any work conditions are violated, the employee could be removed from or denied reentry into the United States.

(2) Guidelines

- A. Employment of foreign nationals is based on the same considerations and review process as for all other candidates. Unless there is a legal requirement for a particular position, citizenship status will not be used to discriminate against a foreign national.

(3) Responsibilities

- A. Each hiring department is responsible for the employment of foreign nationals within their department.
- B. Human Resources acts as an agent and representative for the university and the employee in the filing of petitions through the Washington State Attorney General's Office (AGO). Assistance includes, but is not limited to, communication between the employee and the AGO, review of supporting documentation submitted to the AGO, and internal records retention as required by the United States Customs & Immigration Service (USCIS).

(4) Practices

- A. University visa sponsorship is restricted to certain categories: full-time, tenured or tenure-track, permanent academic positions only. Grant funded positions are not eligible for sponsorship. Exceptions may be made for non-tenure track faculty and staff, only with the vice president's written approval.

- B. Hiring Departments are expected to work with CWU Human Resources on any immigration related process. Approval from the respective Dean and the Provost or VP is required prior to beginning any immigration process. Departments will be required to provide documentation of bona fide recruitment, to include sufficient justification of experience, skills, background, training, education for hiring a foreign national in a particular position, as part of the visa petitioning process.
- C. CWU may ask applicants during the application and hiring process if they are legally authorized to work in the U.S. (visa status as opposed to national origin) and whether they will now or in the future require sponsorship for an immigration-related employment benefit.
- D. Privately-retained attorneys do not have authority to represent the university. The AGO is the university's sole representative and processes all CWU-sponsored employment visas without exception. Individuals may retain their own legal counsel to advise them as a supplement to the process.
- E. Approval for nonimmigrant or permanent resident visa sponsorship does not ensure reappointment or promotion to a tenured position. All university regulations and policies governing personnel actions are applicable to foreign nationals. Applications referred to in these guidelines do not replace normal university personnel procedures, but are in addition to them.

(5) Visa Categories and Corresponding University Regulations

- A. CWU determines the appropriate visa category for the position and practical considerations. The majority of international faculty engage in a variety of teaching activities and hold a CWU appointment that initially requires a temporary, non-immigrant visa to enter the U.S.
- B. It can take well over a year to complete a visa petition, depending on the visa category. Once the permanent residency is approved, another time period is required for a green card opening to become available. Based on the home country, some waits can be a decade or more. This necessitates H1B extensions and the corresponding additional time and legal expense until permanent residency is received.
 - 1. Nonimmigrant Visa (NIV)
 - a. H-1B: Is a non-immigrant visa that allows US companies to employ graduate-level workers in specialty occupations that require theoretical or technical expertise in specialized fields. The employer must sponsor the petition for the employee. These visas are initially granted for up to three years, but may then be extended to a maximum of six years.
 - b. TN-NAFTA Professional: Permits qualified Canadian and Mexican citizens to seek temporary, nonimmigrant entry into the United States to engage in eligible professional activities as defined by USCIS. The initial period of stay is three years, renewable indefinitely. This visa is a good option for an initial entry into the US, but not appropriate for long-term, permanent positions (e.g., tenure-track faculty). The university will convert to H-1B as soon as possible.
 - 2. Permanent Resident (PR) – “Green card”

- a. EB-1 visas are an employer-sponsored, first-preference category requiring a bachelor's degree or higher and demonstrated "extraordinary ability" in the profession by meeting or exceeding specific USCIS criteria.
- b. EB-2 visas are employer-sponsored, second-preference category requiring a bachelor's degree or higher and demonstrated "exceptional ability" in the profession by meeting or exceeding specific USCIS criteria. The employer is required to complete a Permanent (PERM) Labor Certification and to prove that there are no minimally qualified U.S. workers for the position.

History:

*Responsibility: BFA; Authority: Cabinet/UPAC; Reviewed/Endorsed by: Cabinet/UPAC; Review/Effective Date: 02/11/2015; 06/13/2018; Approved by: James L. Gaudino, President
Reformatted and Assigned new Policy Number - Previous Policy CWUP 2-30-115, June 2025
Attached Procedure CWUR 3-40-200 as Appendix A, June 2025*

Appendix A - Employment of Foreign Nationals Procedure

(1) Searches

- A. In all cases, regardless of visa type, the department must conduct the search as normally required for the position and submit to the appointing authority all usual documentation, as well as obtaining approval to sponsor the visa petition. Because each visa petition is unique, departments and the new employee are expected to work closely with Human Resources (HR) throughout the process.

(2) Department Responsibilities

- A. Each hiring department is responsible for the employment of foreign nationals within their department. HR acts as an agent and representative for university and the employee in the filing of petitions through the Washington State Attorney General's Office (AGO).
 1. At the outset of the search process confirm whether the position is eligible for visa sponsorship. CWU visa sponsorship is restricted to full-time, tenure-track, permanent academic positions only. Grant funded positions are not eligible. Rare exceptions may be made for staff, with the Provost's or Vice-President's written approval.
 2. Should foreign nationals emerge as viable candidates in the search process, contact with the HR Immigration Specialist with questions or concerns.
 3. As a part of the screening process, the search committee will ask the following two questions regarding each applicant's ability to work in the US. All applicants should be asked at the same stage in the interview process and all answers should be documented:
 - a. Are you legally authorized to work in the U.S.?
 - b. Will you now or in the future require 'sponsorship for an immigration-related employment benefit'?
 4. Consult with HR before making an offer if candidate answered "yes" to both of these questions.
 5. Obtain written approval for sponsorship from the respective dean and the provost/vp and forwarded to HR in advance of beginning the petition for any type of visa. HR will work with the appointing authority for payment of the related application and legal fees.
 6. Be aware of time frames and other restrictions, for example:
 - a. Developing the visa petition and USCIS processing times combine to create a lengthy process, some of which cannot be expedited. This must be taken into consideration for the hiring timeline.
 - b. Sponsorship of a visa does not equate to an assurance of reappointment or promotion to a tenured position. All university regulations and policies governing personnel actions are applicable to foreign nationals.
 - c. Not all costs of the visa process are covered under a sponsorship. In accepting the position and the sponsorship, the candidate must be prepared to pay some specific

costs out-of-pocket (e.g., I-485 Adjustment of Status filing & legal fees, medical exams, immunizations, etc.).

- d. CWU does not sponsor visas for dependents, therefore the individual bears all costs.
7. Ensure that the new employee:
 - a. Does not begin working until they have obtained all necessary USCIS approvals as required.
 - b. Is performing only those responsibilities on the position description.
 - i. Any change in duties, working conditions, or FTE requires filing an amendment with the USCIS on an H1B visa.
 - ii. A salary reduction requires an amendment; however, an increase in salary does not.
 - c. Completes the I-9 process and documentation at HR.
 - d. Completes the required CWU on-boarding procedures.
 8. Be transparent about CWU immigration policy and procedural intentions.
 - a. Make use of the HR Immigration Specialist as a resource for questions or concerns the department and/or new employee may have and be as pro-active as possible about reporting potential issues so that they may be addressed in a timely fashion.
 - b. Respond promptly to requests for information and/or documentation from the AGO/HR Immigration Specialist. Help the new employee understand the importance of complying with documentation requests, as well as the prolonged nature of the U.S. visa process.
 9. Provide personal courtesies such as housing assistance, information about the local community, and any other appropriate information or assistance the employee needs. The Office of International Studies and Programs and HR can assist in the process as needed.
 10. Notify HR when any foreign national leaves CWU employment for any reason.

(3) H1B: Nonimmigrant Temporary Worker in Specialty Occupations

A. Basic Information

1. Must be employer sponsored.
2. Requires a bachelor's degree or higher. This degree requirement is common to the industry/job and is normally required by the employer for the position. A professor at the university level is always considered a specialty occupation.
3. Employer must file a Labor Condition Application (LCA, ETA Form 9035) and attest to the occupational classification, wage offered, the prevailing wage, work location(s), and the employment dates. LCA is valid for 18 months.

4. The H-1B visa is valid for three years plus one extension of three years (six years total), though may be extended beyond six years if the petition for permanent residency is in process.
5. Can take six months or more to obtain the H-1B approval.
6. Allows for Dual Intent, i.e., the individual is allowed to be in nonimmigrant status and simultaneously apply for permanent residency.
7. If the individual is already in H-1B status at the time of hire, the visa may be transferrable from the previous employer to CWU.

B. Other Considerations

1. Adherence to petition processing deadlines is required. Response to any requests for documentation from the AGO should be given top priority.
2. USCIS processing time frames are in constant flux.
 - a. Any visa petition must have prior approval from the respective dean and provost/vp.
 - b. H-1B petitions are submitted as soon as possible, and according to deadline priority established by the AGO. However, USCIS will not accept petitions which are filed over six months in advance of the requested start date.
 - c. Paying a premium processing fee is an option to expedite the petition review. Either party may opt to pay this fee. Contact the HR immigration specialist for details.
 - d. Complete procedures from HR.
 - e. The H1B beneficiary should not travel outside the US while the petition is in progress.
3. Once the H1B approval is received, readmission to the US is allowed with the approved H1B, current passport, and current visa stamp.
 - a. Due to changing immigration policy at the federal level, it is always prudent to check with the US Customs & Border Protection to verify the documents required for readmission prior to departure.
4. H1B visas are employer specific. Any employment outside of CWU requires a separate employer-sponsored H1B.
5. Other income allowable while in H1B status may include:
 - a. Honorarium if paid by the host institution.
 - b. Expense reimbursement for costs associated with brief speaking engagements.
 - c. Summer employment at CWU that is in full alignment with their usual duties.
 - d. Royalties for a book or invention.

6. If employment is terminated before the end of the H1B period, the university must offer to pay the beneficiary's return to their last place of legal residence. This funding does not extend to family members or personal belongings.

(4) Permanent Residency (PR) – also known as “Green Card”

A. CWU will sponsor only tenure-track or tenured faculty positions, with rare exceptions. It can take well over a year to complete the petition filing, particularly in the case of an EB2. Once the permanent residency is approved, it will be another wait for a green card opening to become available. Based on the home country, some waits can be a decade or more. This necessitates H1B extensions until the permanent residency is received and generates the corresponding additional time and legal expense.

B. General Information

1. EB-1 = Employment-Based Immigration – First Preference

- a. Requires a bachelor's degree or higher.
- b. Demonstrated “extraordinary ability” in the profession by meeting or exceeding specific USCIS criteria.
- c. Employer must file the I-140 Petition for Alien Worker, for the Outstanding Professors & Researchers category.
- d. Most direct path because filing for a PERM is not required.

2. EB-2 = Employment-Based Immigration – Second Preference

- a. Requires a Bachelor's degree or higher.
- b. Demonstrated “exceptional ability” in the profession by meeting or exceeding specific USCIS criteria.
- c. Employer must file the I-140 Petition for Alien Worker.
- d. PERM is required.
 - i. Requires the employer to conduct recruitment efforts to test the U.S. labor market, which document that the employer has been unable to find qualified U.S. citizen or existing permanent resident workers at the offered wage in the area of intended employment who are able, willing, and qualified for the position. The employer must also attest that the foreign national will not displace a qualified U.S. worker or adversely affect the wages and working conditions of similarly-employed U.S. workers.
 - ii. The documents establishing the recruitment efforts and results are retained by HR in an audit file for 5 years.
- e. Plan for a lengthy process - ten months to 3 years or more.

- i. Foreign national is able to continue working as long as the H1B status is kept current.

C. Other Considerations

1. Petition processing deadlines must be adhered to. Response to any requests for documentation from the AGO should be given top priority.
2. USCIS processing time frames are in constant flux.
 - a. Any visa petition must have prior approval from the respective dean and provost/vp.
 - b. H-1B petitions are submitted as soon as possible, and according to deadline priority established at the AG's Office.
 - i. However, note that the USCIS will not accept petitions filed over 6 months in advance of the requested start date.
 - c. Paying a premium processing fee is an option to expedite the petition review. Either party may opt to pay this fee. Contact the HR immigration specialist for details.
 - d. Complete procedures from HR.
3. During the review process for any visa type, USCIS may require submission of additional information through a Request for Evidence (RFE). The RFE is often very detailed, requiring additional internal and external benchmarks and more specific information about the beneficiary. Multiple RFE's can be issued either simultaneously or sequentially. All requests must be responded to in a thorough and prompt manner. By definition, this extends the visa review process and adds another layer of complexity to the process. Thus, the importance of submitting thorough and accurate information in the initial petition cannot be overstressed.
4. Once the Green Card is obtained, the new permanent resident employee is under no legal obligation to stay with the sponsoring employer.